OAH 48-0320-31591

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

David Colling,

Complainant,

vs.

Rebecca Otto,

Respondent.

ORDER ON MOTION FOR SUMMARY DISPOSITION

The above-entitled matter came before the panel of Administrative Law Judges on the Respondent's motion for summary disposition. Respondent filed her motion on July 8, 2014. The Complainant filed a response to the motion on July 15, 2014. Oral argument on the motion was held on July 21, 2014, and the record with respect to the motion closed on that date.

Alan Weinblatt, Weinblatt & Gaylord, PLC, represented David Colling (Complainant).

Charles Nauen and David Zoll, Lockridge Grindal Nauen, PLLP, represented Rebecca Otto (Respondent).

Based upon all of the files, records, and proceedings herein, and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

1. That Respondent's motion for summary disposition is **GRANTED**.
2. That the evidentiary hearing in this matter scheduled for Wednesday, July 30, 2014, is **CANCELLED**.

Dated: July 24, 2014

s/Steve M. Mihalchick
STEVE M. MIHALCHICK
Presiding Administrative Law Judge

s/Jeanne M. Cochran
JEANNE M. COCHRAN
Administrative Law Judge

s/James F. Cannon
JAMES F. CANNON
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this Order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

MEMORANDUM

The Respondent, Rebecca Otto, is seeking re-election to the office of State Auditor. The Complainant is the campaign manager for Matt Entenza. Both Mr. Entenza and Ms. Otto are candidates to be the nominee of the Democratic-Farmer-Labor (DFL) party in the August 12, 2012, primary election.

The Complaint alleges that candidate Rebecca Otto intentionally participated in the preparation and dissemination of false campaign material in violation of Minn. Stat. § 211B.06. "Campaign material" is defined, in relevant part, to mean "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election. . . ."[1]

The Complaint asserts that Ms. Otto maintains a Facebook page that she uses as part of her campaign for State Auditor. On or about June 5, 2014, an individual named "Lauren Marie" posted the following inquiry on Ms. Otto's Facebook page: "Did you really vote for voter ID?"[2] Within 18 minutes of this post,[3] Ms. Otto responded: "No, Lauren. It was not around in 2003. No one can find a bill on the issue when I served."[4] The reference to 2003 denotes Ms. Otto's earlier service as State Representative.

The Complaint alleges that Ms. Otto's statement in response to Lauren Marie that she did not vote for voter ID and that "it was not around in 2003" is false campaign material that Ms. Otto knew was false or communicated with reckless disregard as to whether it was false.

Presiding Administrative Law Judge Steve Mihalchick reviewed the Complaint and attachments and, by Order dated June 12, 2014, determined the Complainant had set forth a *prima facie* violation of Minn. Stat. § 211B.06.

Following a pre-hearing conference, the Respondent moved for summary disposition.

Factual Background

The Respondent served in the Minnesota House of Representatives for one partial term, from February 2003 to January 2005.

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[1] Minn. Stat. § 211B.01, subd. 2.
[2] Complaint Ex. 1.
[3] Affidavit of Rebecca Otto at ¶ 17.
[4] Complaint Ex. 1.

During the 2003 legislative session, the Minnesota House considered two bills, House File (HF) 1119 and HF 1006, which contained language requiring voters to present identification at the polls or sign a statement that they had no such identification.[5]

State Representative (now Congressman) Keith Ellison introduced an amendment to remove the voter identification requirement from HF 1119. Representative Otto voted against adopting the Ellison amendment and the amendment was defeated.[6]

When HF 1119 came to a vote later that same day, with the requirement that voters either present identification at the polls or sign a statement that they had no such identification, Representative Otto voted against the bill.[7]

However, Respondent Otto voted in favor of HF 1006, which also included language requiring that voters either present identification at the polls or sign a declaration stating that they did not have such identification.[8] The bill passed the Minnesota House in May 2003 and was referred to the Senate. When the bill returned from conference committee in 2004, the language requiring voter identification was removed. Ms. Otto voted in favor of the revised version of the bill, and it was ultimately enacted into law.[9]

On or about June 3, 2014, Matt Entenza distributed a letter announcing his candidacy for State Auditor. In the letter, Mr. Entenza stated the following:

> Two of the most important issues we've been fighting for have been the rights of LGBT couples to marry and the right of all Minnesotans to vote without extra burdens being placed on them. . . . Currently we have an Auditor who as a Legislator voted to put a constitutional marriage ban to a popular vote and voted for Voter ID.[10]

On June 5, 2014, "Lauren Marie" posted her inquiry on Respondent's personal Facebook page, and Respondent's reply is what is at issue in this matter.

Motion Standard

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.[11]

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[5] Affidavit of David Zoll at Exs. 2 and 5.
[6] Complaint Ex. 3.
[7] Aff. of Zoll at Ex. 4.
[8] Complaint Ex. 2.
[9] Aff. of Zoll Ex. 6.
[10] Aff. of Zoll Ex. 1.
[11] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); Minn. R. 1400.5500K; Minn. R. Civ. P. 56.03.

The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.[12] A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.[13]

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary judgment, the non-moving party must show that there are specific facts in dispute which have a bearing on the outcome of the case.[14] The nonmoving party must establish the existence of a genuine issue of material fact by substantial evidence; general averments are not enough to meet the nonmoving party's burden under Minn. R. Civ. P. 56.05.[15] The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial.[16]

When considering a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party.[17] All doubts and factual inferences must be resolved against the moving party.[18] If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.[19]

False Campaign Material

Minnesota Statutes § 211B.06, subd. 1, prohibits intentional participation:

> … [i]n the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

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[12] *See* Minn. R. 1400.6600.
[13] *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).
[14] *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Hunt v. IBM Mid-America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).
[15] *Id*.; *Murphy v. Country House, Inc*., 240 N.W.2d 507, 512 (1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1988).
[16] *Carlisle*, 437 N.W.2d at 715 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).
[17] *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. Ct. App. 1984).
[18] *See*, *e.g.*, *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Thompson v. Campbell*, 845 F. Supp. 665, 672 (D. Minn. 1994).
[19] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

As interpreted by the Minnesota Supreme Court, the statute is directed against false statements of fact and not against unfavorable deductions or inferences based on fact.[20] Moreover, the burden of proving the falsity of a factual statement cannot be met by showing that the statement is not literally true in every detail. If the statement is true in substance, inaccuracies of expression or detail are immaterial.[21]

To prove a violation, the Complainant must show by clear and convincing evidence that the statement is factually false and that the person who prepared and disseminated the statement did so knowing it was false or communicated it with reckless disregard of whether it was false.

The term "reckless disregard" was added to the statute in 1998 to expressly incorporate the "actual malice" standard from *New York Times v. Sullivan*.[22]http://www.oah.state.mn.us/aljBase/032019823.primafacie.htm - _ftn2 The test is subjective; the Complainant must come forward with sufficient evidence to prove the Respondent "in fact entertained serious doubts" as to the truth of the statement or acted "with a high degree of awareness" of its probable falsity.[23]http://www.oah.state.mn.us/aljBase/032019823.primafacie.htm - _ftn3

Arguments of the Parties

A. The Respondent's Position

The Respondent, Ms. Otto, argues that the identified statement on her Facebook page is not false. Ms. Otto asserts that the term "voter ID" is commonly understood to refer to the highly publicized and controversial amendment to the Minnesota Constitution that was defeated by Minnesota voters in 2012. The proposed amendment would have required all voters to present a form of government-issued photo identification prior to voting or cast a provisional ballot that they would have to "prove up" by showing identification at their county election office at a later date.

According to Ms. Otto, the bills introduced in 2003 that included language requiring voters to present identification or sign a declaration that they did not have identification were not highly controversial at the time. Moreover, unlike the 2012 constitutional amendment, the 2003 bills provided an exception for individuals without identification and they did not contain a provisional balloting

[20] *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Hawley v. Wallace*, 137 Minn. 183, 186, 163 N.W. 127, 128 (1917); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language).
[21] *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. Ct. App. 1986).
[22] *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964). *See*, 1998 Laws of Minnesota, Chapter 376, Section 3.
[23] *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). *See also Riley v. Jankowski*, 713 N.W.2d 379 (Minn. Ct. App.), *rev. denied* (Minn. 2006).

system. Ms. Otto also notes that the phrase "voter id" or "voter identification" does not appear in either bill.

Ms. Otto maintains that when viewed in the context of a reasonable reader, it is apparent that her statement is factually accurate. Ms. Otto asserts that she interpreted the phrase "voter ID" to refer to the requirements in the restrictive Constitutional Amendment proposed in 2012, and with this understanding, she accurately stated that "[voter ID] was not around in 2003."

Ms. Otto also asserts that she subjectively believed the statement to be true at the time she made it. She argues that, at most, this case presents a misunderstanding between Complainant's assertion that "voter ID" refers to any requirement to present identification prior to voting and her reading of the phrase as referring to the requirements in the highly-publicized and hard-fought restrictive Constitutional Amendment rejected by voters in 2012.

Ms. Otto notes further that shortly after her opponent, Matt Entenza, accused her of having voted for "Voter ID," she spoke to two long-time capitol reporters, Pat Kessler and Tom Hauser.[24] According to Ms. Otto, she told these reporters that she did not remember "voter id" being an issue when she served in the legislature.[25] Ms. Otto asserts that, Mr. Kessler responded in agreement and noted that he could not find any legislation including a "voter ID" provision from that period of time.[26] Shortly thereafter, Ms. Otto repeated this comment on her Facebook page.[27]

Ms. Otto maintains that, given her personal recollection that "voter ID" was not an issue when she served in the legislature, which was reinforced by her conversations with the reporters, the statement on her Facebook page, even if inaccurate, cannot be found to rise to the level of a false statement made with "actual malice."

Finally, Ms. Otto argues that her Facebook page is not "campaign material." The Respondent asserts that comments she makes on her personal Facebook page is not material "disseminated for the purpose of influencing voting" and therefore is not subject to regulation under the Fair Campaign Practices Act. Ms. Otto maintains that she uses her personal Facebook page to connect with friends and family and to update them on the happenings in her life. According to Ms. Otto, the mere fact that she mentions her campaign is not sufficient to bring her personal account within the purview of Section 211B.06. Only statements made "for the purpose of influencing voting at a primary or other election" are subject to the Act.[28]

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[24] Aff. of Otto at ¶¶ 5-6.
[25] *Id*. at ¶ 6.
[26] *Id*. at ¶ 7.
[27] *Id*.
[28] Minn. Stat. § 211B.06.

Ms. Otto maintains that the statement at issue in this case was made in response to a comment by a Facebook friend, it was conversational, and was in no way intended to influence voting at the primary or any other election. Ms. Otto contends that the postings on her personal Facebook page are fundamentally different than campaign literature or advertisements which are prepared and disseminated to influence voters. Ms. Otto asserts that the impromptu exchange was limited to her Facebook friends and was not intended to reach or influence voters. Ms. Otto contends that applying Section 211B.06 to her statements would represent a dramatic expansion of the scope of the Fair Campaign Practices Act. It would, according to Ms. Otto, regulate communications between friends and family on social media and have a chilling effect on free political discourse in the digital age.

Lastly, Ms. Otto notes that because Section 211B.06 is a criminal statute and regulates free speech, it must be construed narrowly in favor of free speech.[29]

B. **The Complainant's Position**

The Complainant, Mr. Colling, argues that Respondent's statement that she did not vote in favor of "voter ID" is a false statement. Mr. Colling asserts that it is irrefutable that in 2003, Ms. Otto did vote in favor of HF 1006, which had a voter identification requirement, and that she voted against an amendment to delete a similar voter identification requirement from HF 1119. The Complainant contends that Ms. Otto adds "insult to injury" by further denying that the issue of voter identification even came before her while she was a member of the House by stating falsely that "it was not around in 2003."[30]

Mr. Colling maintains that Ms. Otto either knew her statement was false, because it is based on her own conduct, or she made the statement with reckless disregard as to whether it was false. In support of his argument, Mr. Colling notes that Ms. Otto responded within 18 minutes of the question being posted on her Facebook page and that she made her statement "without any research and expressed no reservation or explanation."[31] Mr. Colling argues that Ms. Otto knew "or could have easily determined, prior to her unconditional 'No Lauren' that she had cast votes in favor of the voter identification requirements in HF 1006 and against Ellison's amendment to HF 1119."[32] According to Mr. Colling, the fact that the Respondent did not research her own voting record or provide any explanatory information to readers "is conclusive

[29] *See*, *F.E.C. v. Wisconsin Right to Life*, 551 U.S. 449, 457 (2007) (the "First Amendment requires [tribunals] to err on the side of protecting political speech rather than suppressing it;" particularly in the context of campaigns for public office); *State v. Stevenson*, 656 N.W.2d 235, 238 (Minn. 2003)(the rule of lenity state that "[when] the statute in question is a criminal statute, courts should resolve the ambiguity concerning the ambit of the statute in favor of lenity.")
[30] Complaint's Response to the Motion for Summary Disposition at 9.
[31] *Id*. at 10.
[32] *Id*. at 12.

evidence of at least her 'careless disregard' within the meaning of Section 211B.06."[33]

Mr. Colling contends further that the phrase "voter ID" means any requirement to present identification prior to voting and is not limited to the requirements proposed in the failed Constitutional amendment of 2012. According to the Complainant, Ms. Otto's efforts to distinguish "voter ID" from "voter identification" does not create a defense.

Finally, Mr. Colling argues that Ms. Otto's personal Facebook page is campaign material because the statement at issue was disseminated to approximately 2,826 "friends" on a page with the heading: "OK Democrats and all of my supporters, ready to show 'em what we've got?"[34] Mr. Colling maintains that the clear purpose of Ms. Otto's Facebook page is to influence people's votes and the fact that the postings were on Respondent's personal Facebook page rather than her campaign Facebook page should not guide the analysis. In fact, Mr. Colling asserts that if the Panel were to carve out an exception for "personal" social media sites, it would create a large loophole in regulating false campaign material under § 211B.06.

Analysis

A. OAH Authority to Consider the Motion

As an initial matter, the Complainant challenges the authority of the Presiding Administrative Law Judge or Panel to consider a motion for summary disposition in a Fair Campaign Practices complaint matter.[35] In his request for reconsideration submitted to the Chief Administrative Law Judge, Mr. Colling argued that there is nothing in Minn. Stat. § 211B.32, *et seq*., that requires or permits a summary disposition procedure in campaign complaint matters.

Campaign complaints are not contested cases within in the meaning of chapter 14 and are not otherwise governed by chapter 14.[36] Consequently, the OAH has held in prior cases that all of the discovery procedures available to parties in contested case proceedings are not available to parties in these cases.[37]

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[33] *Id*.
[34] Complaint Ex. 1.
[35] *See* Complainant's Request for Reconsideration by Chief Administrative Law Judge (June 27, 2014). The Complainant also asserted that the scheduling of a telephone pre-hearing conference improperly delayed the hearing process.
[36] Minn. Stat. § 211B.36, subd. 5.
[37] *See House Republican Campaign Committee v. Minnesota DFL State Committee*, OAH 4-0320-20027, Order on Request for Subpoena Duces Tecum (January 5, 2009).

However, the OAH has permitted motions for summary disposition in campaign complaint matters under the broad authority of Minn. Stat. § 211B.36.[38] This statute allows the Panel to consider "any evidence and argument submitted until a hearing record is closed, including affidavits and documentation." The authority to permit pre-hearing conferences and motions to narrow the range of issues for hearing or to determine that one party is entitled to judgment as a matter of law may be fairly drawn from the authority granted the OAH under Minn. Stat. § 211B.32, *et seq.,* to hear and determine complaints and to consider "any evidence and argument."[39] In addition, using motion practice to narrow the issues for hearing fulfills the legislative purpose behind the Fair Campaign Practices complaint process to resolve these matters expeditiously.

Recently, in *Minnesota Voters Alliance v. Anoka Hennepin School District*,[40] the Minnesota Court of Appeals affirmed an Administrative Law Judge's summary disposition dismissal of a complainant's false statement claim.[41] Although the authority of the Administrative Law Judge to entertain a motion for summary disposition was not directly challenged in that case, the Court's affirmance suggests that consideration of dispositive motions may be fairly drawn from the statutory procedures provided in the Fair Campaign Practices Act.

Therefore, the Panel rejects the Complainant's cramped reading of the Fair Campaign Practices Act and will consider the Respondent's motion for summary disposition.

B. Legal Analysis of Section 211B.06 Claim

The prohibition against the preparation and dissemination of false campaign material has two elements: (1) A person must intentionally participate in the preparation or dissemination of false campaign material; and (2) the person developing or disseminating the material must know that the item is false, or act with reckless disregard as to whether it is false.[42]

As to the first element of the statute, the test is objective: The statute is directed against false statements of fact. The alleged false statement of fact in this case is the Respondent's claim that she did not vote in favor of "voter ID" when she served in the Minnesota House of Representatives.

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[38] *See, e.g., Thul v. Minnesota DFL Party*, OAH Docket 11-0320-21159, Order on Motion for Summary Disposition (April 20, 2010).

[39] *Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n*, 369 N.W.2d 530, 534 (Minn. 1985)("[W]hile we need not give an agency's express statutory authority 'a cramped reading,' any enlargement of powers by implication must be 'fairly drawn and fairly evident from the agency's objectives and powers expressly given by the legislature.'")

[40] 2013 WL 6725847 (Minn. Ct. App. 2013) (unpublished). The Court of Appeals reversed the ALJ's summary disposition dismissal of the complainant's campaign financial reporting claim.

[41] *Id*. at 3.

[42] Minn. Stat. § 211B.06.

With respect to the second element of the statute – namely, Respondent's awareness surrounding her claim – the test is subjective: the Complainant must prove by clear and convincing evidence that the Respondent "in fact entertained serious doubts" as to the truth of the statement or acted "with a high degree of awareness" of its probable falsity.[43] Otherwise, his claim for relief fails.

The language of section 211B.06 closely tracks the standard for actual malice.[44] Actual malice requires more than mere "recklessness" generally applied to civil cases.[45] A complainant must demonstrate that the respondent made a false statement while subjectively believing the statement to be false or "probably false."[46] It is insufficient to show only that "a reasonably prudent man would [not] have published[] or would have investigated before publishing,"[47] or merely that a person failed to investigate.[48]

In order to defeat a motion for summary disposition there must be material factual disputes requiring a hearing. Summary disposition cannot be defeated with "unverified and conclusory allegations or by postulating evidence that might be developed at trial."[49]

Other than maintaining that Ms. Otto's failure to conduct research prior to making her statement and her quick and unconditional response are indications of reckless disregard, the Complainant has presented no other evidence to support his claim that Ms. Otto knew her statement was false or made it while subjectively believing it was probably false. Mr. Colling suggests that he may develop the evidence necessary to prove his claim by way of cross-examination at the hearing.[50] Speculation as to evidence that might be developed at trial, however, is not sufficient to defeat a motion for summary disposition.

The Panel concludes that there are no disputed facts in this matter – only differing interpretations of the meaning of the phrase "voter ID." Ms. Otto maintains she interpreted the phrase in the current vernacular as referring to the government issued photo identification requirements and provisional balloting that was set forth in the proposed Constitutional amendment that was defeated in 2012. With this understanding, which was reinforced by her conversations with the reporters, and given that her votes on HF 1119 and HF 1006 occurred more

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[43] *St. Amant*, 390 U.S. at 731; *Garrison v. Louisiana*, 379 U.S. at 74; *Riley v. Jankowski,* 713 N.W. 2d 379 (Minn. Ct. App.) *review denied* (Minn. 2006).
[44] *See New York Times Co. v. Sullivan*, 376 U.S. at 279-280; *Chafoulias v. Peterson*, 668 N.W.2d 642, 654 (Minn. 2003); *Riley v. Jankowski*, 713 N.W.2d 379, 398-99 (Minn. Ct. App. 2006), *review denied* (Minn. July 19, 2006).
[45] *Chafoulias*, 668 N.W.2d at 654.
[46] *Id*. at 655.
[47] *St. Amant*, 390 at 731.
[48] *Chafoulais*, 668 N.W.2d at 655.
[49] *Northern States Power Company v. Minnesota Metropolitan Council, Minnesota Department of Transportation, et al*., 684 N.W.2d 485, 491 (Minn. 2004); *Funchess v. Cecil Newman Corp*., 632 N.W.2d 666, 672 (Minn. 2001).
[50] *See* Complainant's Response to Summary Disposition Motion at 10.

than 11 years ago, the Respondent responded to Lauren's question on her Facebook page by saying she did not vote for voter ID.[51]

Even assuming for purposes of this motion that Ms. Otto's statement is false and that the phrase "voter ID" encompasses any voter identification requirements and not just those presented in the proposed Constitutional amendment, the Complainant has failed to identify any evidence to support his claim that at the time Ms. Otto made her statement she knew it was false or she made it with a high degree of awareness that it was probably false. Contrary to Mr. Colling's contention, Ms. Otto was under no obligation to conduct legislative research before replying to "Lauren" and her failure to do so is not evidence of "actual malice."[52] Moreover, rather than evidencing "actual malice," Ms. Otto's quick response to the Facebook post tends to support the conclusion that she subjectively understood her response to be truthful.

The Complainant at most has shown Ms. Otto was mistaken, had a lapse in memory regarding her voting record, or was imprecise in her response on her Facebook page. The Complainant has put forward no facts to dispute the testimony in Ms. Otto's affidavit that she understood her statement to be true at the time she made it. Likewise, no facts in this record support the claim that Respondent acted with a reckless disregard for the truth.

Viewing the evidence submitted in the light most favorable to the Complainant, Respondent's motion for summary disposition is granted and the Complaint is dismissed. Given this determination, it is not necessary for the Panel to reach the issue of whether Ms. Otto's personal Facebook page is "campaign material" within the meaning of Minn. Stat. § 211B.01, subd. 2.

The evidentiary hearing in this matter scheduled for July 30, 2014, is cancelled.

S.M.M., J.M.C., J.F.C.

[51] Complaint Ex. 1.
[52] *Chafoulais*, 668 N.W.2d at 655.